U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: D2004-015 Date: August 16, 2006

In re: MAC TRUONG, DISBARRED ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

APPEAL

ON BEHALF OF GENERAL COUNSEL: Jennifer J. Barnes, Esquire

ON BEHALF OF DHS: Eileen M. Connolly, Appellate Counsel

ON BEHALF OF RESPONDENT: Pro se

On March 30, 2006, Assistant Chief Immigration Judge David L. Neal, acting as the adjudicating official in this case, sent a decision to the parties ordering the respondent suspended from practice before the Immigration Courts, Board of Immigration Appeals, and Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service), for a period of 7 years, commencing on August 11, 2005.[1] The respondent has filed an appeal with the Board. The Office of General Counsel for the Executive Office for Immigration Review, which initiated this case, argues that the appeal should be dismissed. The appeal from the well-reasoned decision of Judge Neal will be dismissed.

BACKGROUND

I. *The Broadwhite Litigation*

The respondent was admitted to the practice of law in New York on February 17, 1982. *See In Re Truong*, 800 N.Y.S.2d 12 (N.Y. App. Div. 2005); Exh. 7.1 (Aug. 11, 2005, order of the New York Supreme Court, Appellate Division, First Judicial Department, disbarring respondent from the practice of law).

On January 20, 2000, Justice Harold Tompkins of the New York County Supreme Court issued a judgment in a landlord-tenant action, *Broadwhite Associates v. Truong*, that the respondent had offered a forged lease into evidence and had given false testimony in support of the evidence. *See Broadwhite Associates v. Truong*, 740 N.Y.S.2d 882 (N.Y. App. Div. 2002); *see also* I.J. at 2.

[1] We note that Judge Neal now serves as Acting Chief Immigration Judge.

The respondent thereafter unsuccessfully filed actions in the United States District Court for the Southern District of New York against Broadwhite Associates and others, seeking to overturn Justice Tompkins' judgment. *See* Exh. 13.4 (July 21, 2004, consent order in bankruptcy court); I.J. at 2.

The respondent filed for bankruptcy in the United States Bankruptcy Court for the District of New Jersey, on July 12, 2000. *See McGoldrick v. Truong*, 2006 WL 436117 (D.N.J. Feb. 15, 2006) (unpublished); Exh. 13.4 (July 21, 2004, consent order in bankruptcy court); I.J. at 2. The bankruptcy action was dismissed in October, 2002. *See McGoldrick v. Truong, supra*; I.J. at 2.

The New York Supreme Court, Appellate Division, First Judicial Department, upheld Justice Tompkins' order on May 7, 2002. *See Broadwhite Associates v. Truong, supra*; *see also* I.J. at 2. The Court found that Justice Tompkins' order was "premised upon a fair interpretation of the evidence." *Id.* The Court went on to state that "the record discloses in addition that the sanctions imposed by [Justice Tompkins] upon defendants[2] for their unremitting course of obstructionist, frivolous, and otherwise contemptuous conduct during this litigation, including disobedience of court orders, were entirely proper." *Id.*

The respondent on October 29, 2002, filed suit in the United States District Court for the District of New Jersey, seeking to overturn the judgment in the Broadwhite case. *See* Exh. 3 (Respondent's "Affirmation In Response to Petition for Immediate Suspension"); 3.1 (Docket entries); I.J. at 3. The case was dismissed on February 6, 2003. *Id.* The respondent twice appealed to the United States Court of Appeals for the Third Circuit. *See* Exhs. 3.1, 13.8.

The respondent filed again for bankruptcy in the United States Bankruptcy Court for the District of New Jersey, on September 15, 2003. *See* Exh. 13.4 (July 21, 2004, consent order in bankruptcy court); I.J. at 3. During that case, the respondent filed a complaint against the Departmental Disciplinary Committee for the First Department (DDC). *See* Exhs. 3.5, 3.6. The United States Bankruptcy Judge signed a consent order settling the case on July 21, 2004. *See* Exh. 13.4 (July 21, 2004, consent order in bankruptcy court); I.J. at 3.

The respondent filed a motion with the Third Circuit on July 26, 2004, seeking to vacate the judgment in the Broadwhite litigation, and seeking to have the parties enjoined from relying on findings of fact made by Justice Tompkins. *See* Exh. 13.2 (Notice of Motion filed in Third Circuit); I.J. at 3. The motion was denied on October 29, 2004. *See* Exh. 9.3 (Third Circuit Docket Entries); I.J. at 3. Broadwhite Associates thereafter sought to have the Third Circuit reconsider its decision denying the motion. *See* Exh. 13.2 (Nov. 28, 2004, letter from Broadwhite attorney to Third Circuit); I.J. at 3. Broadwhite's counsel represented that they did not oppose Truong's motion, but said it was inaccurate to say that Justice Tompkins' order had been set aside. *Id.* The Third Circuit reconsidered the motion on May 12, 2005, and later dismissed the respondent's appeal. *See* Exh. 9.3 (Third Circuit Docket Entries); I.J. at 3.

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[2]The respondent's wife was also a party to the action.

The respondent on December 29, 2005, sought to have the Third Circuit hold the DDC in contempt of court, for continuing to rely on Justice Tompkins' order in the Broadwhite litigation. *See* Exh. 13.13; I.J. at 3. The respondent argued that the DDC could not rely on the judgment issued by the court in 2000, given the consent order in the bankruptcy proceedings, and the Third Circuit's dismissal of the respondent's appeal. *Id.* The Third Circuit denied the motion on December 30, 2005. Docket entries note the Third Circuit's finding that "there is no order or judgment as to which appellants prevailed which could be enforced." *See* Third Circuit Docket Summary (available on PACER); I.J. at 3.

The respondent then filed in the United States District Court for the District of New Jersey an ethics complaint against the DDC attorney. *See McGoldrick v. Truong*, *supra*; I.J. at 4. The respondent claimed that the staff attorney, in pursuing a disciplinary action against the respondent, was in violation of the Bankruptcy Court consent order and Third Circuit orders. *Id.* The court found the respondent's claims to be "completely unfounded", stating that:

> [n]one of these orders had the effect that [the respondent] attributes to them, and he uses, distorts and misconstrues them in a manner that can only be designed to deceive the court. It is obvious that [the respondent's] underlying purpose is to obtain a ruling from some court that will undermine the basis of the New York Supreme Court, Appellate Division's action suspending and ultimately disbarring him, an action predicated upon Justice Tompkins's finding that he used a forged lease and testified falsely in the case before him. ... [The consent order] by no stretch of the imagination purported to enjoin... proceedings against [the respondent] based on Justice Tompkins's findings. Even if the parties had entered into such an agreement, and even if it were incorporated in an order, it could not under any legal theory have altered or vacated an opinion and final judgment of a state court.

McGoldrick v. Truong, *supra.* The Court further found that the Third Circuit had not enjoined the DDC from its continuing use of Justice Tompkins' opinions and finding. *Id.* The Court warned the respondent that he would face sanctions if he pursued "such a frivolous and baseless ethics complaint" in the future. *Id.*; I.J. at 4. The United States District Court for the District of New Jersey dismissed a similar ethics complaint against a bankruptcy trustee on May 4, 2006. *See Truong v. Kartzman*, 2006 WL 1407706 (D.N.J. May 4, 2006)("...a major portion of Mac Truong's complaint is based upon misrepresentations of the effect of orders of the Bankruptcy Court and orders of the Court of Appeals for the Third Circuit").

On February 22, 2006, the respondent filed another suit against the DDC and others in the United States District Court for the Southern District of New York. *See Truong v. McGoldrick*, 2006 WL 1788960 (S.D.N.Y. June 27, 2006). In dismissing the complaint, the court noted that "[the respondent] had a full and fair opportunity to litigate the initial state court determination of forgery. The [respondent] also had a full and fair opportunity to litigate the forged lease issue throughout the course of his disciplinary proceedings." *Id.* In light of his "history of vexatious and frivolous litigation", the respondent was enjoined from filing similar lawsuits without court approval. *Id.*

As Judge Neal states,

> the respondent has filed multiple actions, motions, and complaints in a variety of venues with the clear goal of unsettling the factual finding of the Broadwhite litigation. He unsuccessfully attempted to challenge those findings in both state and federal courts in New York. He also sought to neutralize those findings, without apparent success, through bankruptcy proceedings and related litigation before federal courts in New Jersey and the Third Circuit Court of Appeals.

See I.J. at 4.

II. ***Disciplinary Proceedings***

Disciplinary proceedings were instituted against the respondent in New York, based in large part on his professional misconduct in the Broadwhite matter.[3]

On December 2, 2003, the New York Supreme Court, Appellate Division, First Judicial Department, suspended the respondent from the practice of law, until further order of the court. *See Matter of Truong*, 768 N.Y.S.2d 450 (N.Y. App. Div. 2003); Exhs. 1.1, 1.2; I.J. at 4.

Consequently, on February 9, 2004, the Office of General Counsel petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. *See* Exh. 1; I.J. at 5. On February 11, 2004, the DHS asked that the respondent be similarly suspended from practice before that agency. *See* Exh. 2; I.J. at 5. On March 19, 2004, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS, pending final disposition of this proceeding. *See* Exh. 4; I.J. at 5. We declined to reconsider this order on April 27, 2004. *See* Exh. 6; I.J. at 5.

On August 11, 2005, the New York Supreme Court, Appellate Division, First Judicial Department, disbarred the respondent from the practice of law. *See In Re Truong*, *supra*; Exh. 7.1; I.J. at 5. The respondent was found to have violated numerous rules of practice. Significantly, the court noted that "... respondent is unfit to practice law. He submitted a forged document to the court [in a landlord-tenant action] and testified falsely in support thereof and, far from demonstrating any remorse, he steadfastly refuses to acknowledge that he committed any conduct. He is undeterred in frivolous and contemptuous conduct." An attempted appeal of this order was dismissed as untimely on February 16, 2006. *See In Re Truong*, 6 N.Y.3d 799 (N.Y. 2006).

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[3]We note that on July 31, 2006, the United States Supreme Court suspended Truong from the practice of law in that Court, and he was ordered to show cause why he should not be disbarred from the practice of law before the Court. *See In Re Discipline of Truong*, __ S.Ct. __, 2006 WL 2096369 (Jul. 31, 2006).

On September 19, 2005, the Office of General Counsel filed with the Board its Notice of Intent to Discipline, seeking the respondent's suspension from practice before the Board and immigration courts, for 7 years. *See* Exh. 7; I.J. at 6. On September 21, 2005, the DHS asked that any discipline applied also be similarly applied as to the respondent's ability to practice before that agency. *See* Exh. 8; I.J. at 6.

After the respondent requested a hearing on the charges in the Notice of Intent to Discipline, the record was forwarded to the Office of the Chief Immigration Judge under 8 C.F.R. § 1003.106, which states that, in attorney discipline cases, that office shall appoint an adjudicating official (an Immigration Judge) when an answer is filed. *See also Matter of Ramos*, 23 I&N Dec. 843, 845 (BIA 2005); *Matter of Gadda*, 23 I&N Dec. 645, 647-48 (BIA 2003), *aff'd, Gadda v. Ashcroft*, 377 F.3d 934 (9th Cir. 2004); I.J. at 6. Judge Neal held a telephonic hearing on February 28, 2006, where the respondent stated that he had no additional evidence to present. *See* I.J. at 6.

In a decision mailed on March 30, 2006, Judge Neal suspended the respondent from practice before the Immigration Courts, Board, and DHS, for a period of 7 years. The respondent filed a timely appeal with the Board on April 12, 2006. *See* C.F.R. § 1003.106(c) (providing that the Board has jurisdiction to review the decision of the adjudicating official and conducts a *de novo* review of the record); *see also Matter of Ramos*, *supra*, at 845; *Matter of Gadda*, *supra*, at 647. The Office of General Counsel filed a brief in support of Judge Neal's decision on July 14, 2006. The respondent stated that he would not file a separate written brief, but would rest on his "Affirmation In Support of Appeal" that he submitted with his Notice of Appeal.

ANALYSIS

As alleged by the Office of General Counsel, Truong has been disbarred in the state of New York. 8 C.F.R. § 1003.102(e)(1); I.J. at 7; Govt. Br. at 2-4. The regulations provide for summary disciplinary proceedings against a practitioner who has been disbarred by the highest court of a state, like the respondent. Where the Office of General Counsel brings proceedings based on a final order of disbarment, such an order creates a rebuttable presumption that disciplinary sanctions should follow. 8 C.F.R. § 1003.103(b)(2); *Matter of Ramos*, *supra*, at 845, 847-48; *Matter of Gadda*, *supra*, at 648; I.J. at 6. Such a presumption can be rebutted only upon a showing that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in injustice. *Id.*

Judge Neal correctly determined that none of the exceptions contained in 8 C.F.R. § 1003.103(b)(2) which would excuse Truong from discipline, despite being disbarred, apply. *See* I.J. at 7-9; *see also* Govt. Br. at 4-5.

First, Truong did not show that "the underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process." 8 C.F.R. § 1003.103(b)(2)(i); I.J. at 7-8; Govt. Br. at 4-5. As discussed above, Truong has challenged the underlying ruling in the Broadwhite litigation, as well as the resulting disciplinary action, before multiple state and federal courts. As Judge Neal states, "... notice and opportunity to be heard are clearly not at issue." I.J. at 8.

Next, Truong did not show that "there was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his ... duty, accept as final the conclusion on that subject." 8 C.F.R. § 1003.103(b)(2)(ii); I.J. at 8; Govt. Br. at 5. Rather, as Judge Neal found, the state court findings in the Broadwhite litigation have not been unsettled. I.J. at 8. Instead, numerous courts have found "without exception... that the respondent had committed professional misconduct." *Id.* Judge Neal also properly concluded that no federal court, including the Third Circuit, had nullified the state court order in the Broadwhite litigation. I.J. at 8; *McGoldrick v. Truong, supra*; *Truong v. Kartzman, supra.* As the Office of General Counsel appropriately observes, the respondent in his "Affirmation In Support of Appeal" improperly attempts to relitigate yet again the underlying landlord-tenant proceeding, as well as the state bar disciplinary proceeding. Govt. Br. at 6.

Finally, Truong failed to show that "the imposition of discipline by the adjudicating official would result in grave injustice." 8 C.F.R. § 1003.103(b)(2)(iii); I.J. at 8-9; Govt. Br. at 5. As Judge Neal states, "the discipline authorities and courts of the State of New York have repeatedly considered the respondent's misconduct in the Broadwhite litigation, found him to merit discipline, and deemed him unfit to practice law. The imposition of comparable discipline by this court would not be unjust" (I.J. at 9).

In sum, we agree with the Office of General Counsel (Govt. Br. at 5) that the respondent failed to show that any of the exceptions to discipline listed in 8 C.F.R. § 1003.103(b)(2) are applicable, that discipline was therefore properly ordered by Judge Neal, based upon a final order of disbarment issued by the New York Supreme Court, Appellate Division, First Judicial Department, on August 11, 2005, and that suspension for 7 years is the appropriate sanction.

ORDER: The respondent's appeal is dismissed and Mac Truong is suspended from practice before the Board, the Immigration Courts, and the DHS, for a period of 7 years, effective August 11, 2005, as ordered by Judge Neal.

FOR THE BOARD